

Comparison of Certain Provisions of the Montana Water Use Act, Current Flathead Reservation Regulatory Status, and the Proposed Unitary Management Ordinance (UMO) for the Flathead Reservation. Provisions listed are summaries. See referenced citations for more information.

<b><u>Water Right Administration Provision</u></b>	<b><u>Montana Water Use Act</u></b>	<b><u>Current Flathead Reservation Authority<sup>(1)</sup></u></b>	<b><u>Proposed Flathead Reservation Unitary Mgmt Ordinance (UMO)</u></b>
<b>Permitting Process for Domestic Wells</b>	Groundwater development of $\leq 35$ gpm & $\leq 10$ af per year are excepted from permitting requirements. Filing of 'Notice of Completion' Form 602 required. MCA 85-2-306(3)	No Regulatory Authority	Groundwater development allowed with streamlined permitting process under provisions of Domestic Allowance (UMO 2-2-117). Flow and volume limitations are $\leq 35$ gpm & $\leq 2.4$ af for Individual and Shared Allowances, and $\leq 35$ gpm & $\leq 10$ af for Development Allowance.
<b>Permitting Process for Small Stock Water Ponds</b>	Stockwater pits < 15 af capacity < 30 af annually allowed with conditions on source & parcel size with filing of 'Provisional Permit for Completed Stockwater Pit ' (Form 605) MCA 85-2-306(6)	No Regulatory Authority	Stock water development allowed with streamlined permitting process under provisions of Stock Water Allowance (UMO 2-2-116). Well Allowance is $\leq 35$ gpm & $\leq 2.4$ af. Pit Allowance is $\leq 5$ af capacity & $\leq 10$ af annually. Surface Water Allowance is $\leq 10$ gpm & $\leq 2.4$ af.
<b>Water Right Permits</b>	Application process for acquiring new water right permits outside of closed basins provided. Applications that meet criteria for issuance (MCA 85-2-311) issued.	No Regulatory Authority	Application process for acquiring new water right permits provided (UMO 2-2-101 thru 109). Applications that meet the conditions of UMO 2-2-102 issued.
<b>Water Right Change Authorizations</b>	Application process to change an existing water right provided. Change of Appropriation Water Right applications that meet the criteria (MCA 85-2-402(2)) are issued.	No Regulatory Authority	Application process to change an existing water right provided (UMO 2-2-101 thru 109). Applications that meet the conditions of UMO 2-2-102 are issued.
<b>Issuance Authority</b>	Issuance decision authority rests with DNRC Water Resources Division Regional Manager, with objections heard by Hearings Officer, whose decision is appealable to Montana District Court.	No Regulatory Authority	Issuance decision authority rests with the Water Engineer, whose decision is appealable to the UM Board and ultimately appealable to a court of competent jurisdiction. UMO 2-2-109 thru 112.
<b>Redundant &amp; Substitute Wells</b>	Provisions for redundant and substitute wells without prior approval of the DNRC allowed with conditions. (MCA 84-2-402 (16) & (17))	No Regulatory Authority	Provisions for redundant and substitute wells without prior approval of the Board allowed with conditions. (UMO 2-2-115).

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<b>Heating &amp; Cooling Wells</b>	Expedited process for non-consumptive heating and cooling wells if maximum appropriation is ≤ 350 gpm (MCA 85-2-306(3)(a)(ii))	No Regulatory Authority	Expedited process for non-consumptive heating and cooling wells if maximum appropriation is ≤ 350 gpm (UMO 2-2-119).
<b>Temporary Emergency Appropriations</b>	Temporary emergency appropriations allowed without prior approval of DNRC (ARM 36.12.105)	No Regulatory Authority	Temporary emergency appropriations allowed without prior approval of Board. (UMO 2-2-120)
<b>Groundwater Management Areas</b>	Process for designating a controlled groundwater area by water user petition or by municipality, etc, provided for at MCA 85-2-506	No Regulatory Authority	Process for designating a groundwater management area by water user petition or municipality, etc provided for at UMO 1-1-109
<b>Enforcement</b>	Complaint driven process. Water users encouraged to work out differences. DNRC WRD Regional Manager evaluates written complaints. Authority for judicial enforcement described at MCA 85-2-114. Water Commissioner can be appointed by petition to District Court.	State law applies identically on and off the Reservation but there are major unsettled legal questions about DNRC or State court jurisdiction to hear enforcement disputes involving the Tribes' water rights.	Complaint driven process. Water users encouraged to work out differences. Water Engineer evaluates written complaints and provides decision. Appealable to Board, and ultimately to court of competent jurisdiction. Water Commissioner can be appointed by UM Board. See UMO 3-1-101 thru 117
<b>Abandonment</b>	Non-use for 10 consecutive years when water is available for use indicates intent to abandon the right or portion of right. MCA 85-2-404; <u>79 Ranch v. Pitsch</u> , 204 Mont. 426 (1983).	State law applies identically on and off the Reservation for water rights arising under state law.	Non-use for 10 consecutive years when water is available for use indicates intent to abandon the right or portion of right. (UMO 2-1-111) Non-use of the tribal water does not subject the tribal water right to abandonment.

(1) In re Beneficial Water Use Permit, 278 Mont. 50, 923 P.2d 1073 (1996) ("Ciotti"); Confederated Salish & Kootenai Tribes v. Clinch, 297 Mont. 448, 992 P.2d 244 (1999) ("Clinch" or "Citotti II"); Confederated Salish & Kootenai Tribes of the Flathead Reservation v. Stults, 312 Mont. 420, 59 P.3d 1093 (2002) ("Stults" or "Ciotti III"); 4) Confederated Salish & Kootenai Tribes v. Clinch, 336 Mont. 302, 158 P.3d 377 (2007) ("Axe" or "Ciotti IV").